

STATE OF MICHIGAN
COURT OF APPEALS

LAURI A. STRAFFON,

Plaintiff-Appellant,

v

HEATHER R. DONOLON-MARSON,

Defendant-Appellee.

UNPUBLISHED
February 19, 2008

No. 276140
St. Clair Circuit Court
LC No. 05-001060-NI

Before: Bandstra, P.J., and Donofrio and Servitto, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court order granting summary disposition in favor of defendant under MCR 2.116(C)(10), in this automobile negligence action. We affirm. This case has been decided without oral argument under MCR 7.214(E).

We review the trial court's grant of summary disposition de novo. *Greene v AP Products, Ltd*, 475 Mich 502, 507; 717 NW2d 855 (2006). In reviewing a grant of summary disposition under MCR 2.116(C)(10), we consider the documentary evidence in the light most favorable to the party opposing the motion. *Id.*

Plaintiff first argues that the trial court erred by granting summary disposition to defendant with regard to her serious impairment of body function claim. We disagree.

There was evidence that plaintiff lost two of her teeth as a result of the motor vehicle accident. To show a serious impairment of body function, plaintiff was required to show an impairment that affected her general ability to lead her normal life. *Kreiner v Fischer*, 471 Mich 109, 132; 683 NW2d 611 (2004). While we recognize that one could presume the loss of the two teeth would have changed to some degree how plaintiff ate and spoke, she presented no evidence as to how this affected her general ability to lead her normal life. Absent such evidence, mere speculation about the potential effects of the loss of these teeth on plaintiff's life is insufficient to create a genuine issue of material fact. *Bennett v Detroit Police Chief*, 274 Mich App 307, 319; 732 NW2d 164 (2006).

We note that *Owens v Detroit*, 163 Mich App 134; 413 NW2d 679 (1987), which plaintiff cites as holding that the loss of teeth constitutes a serious impairment of body function, is inapplicable. *Owens* was decided with regard to a prior statutory definition of serious impairment of body function, not the current definition (which applies to this case) established

by a 1995 amendment to the no fault act. See *Kreiner, supra* at 121. In this regard, *Owens* stated that the trial court's finding of no serious impairment of body function was correct under *Cassidy v McGovern*, 415 Mich 483; 330 NW2d 22 (1982), but not under the then controlling opinion of *DiFranco v Pickard*, 427 Mich 32; 398 NW2d 896 (1986). In *Kreiner*, our Supreme Court stated that "the most uncomplicated reading of the 1995 amendment is that the Legislature largely rejected *DiFranco* in favor of *Cassidy*." *Kreiner, supra* at 121 n 8. Accordingly, because the holding in *Owens* was based on *DiFranco*, it is inapplicable to the current definition of serious impairment of body function.

As to plaintiff's remaining alleged injuries such as headaches, difficulty sleeping, and back problems in support of her serious impairment of body function claim, plaintiff has not presented medical evidence to reasonably support a conclusion that the claimed injuries resulted from the automobile accident. In particular, medical reports offered by plaintiff merely indicate that the relevant symptoms have "occurred since the accident" and that plaintiff stated her pain resulted from injuries due to the accident. However, plaintiff is not a medical expert, and, accordingly, while the sincerity of her belief must be accepted, she is clearly not qualified to diagnose the symptoms at issue as resulting from the automobile accident. Accordingly, plaintiff has simply failed to prove the required element of causation as to these symptoms because she has not presented "substantial evidence from which a jury may conclude that more likely than not, but for the defendant's conduct, the plaintiff's injuries would not have occurred." *Skinner v Square D Co*, 445 Mich 153, 164-165; 516 NW2d 475 (1994).

Plaintiff also argues that the trial court erred in granting summary disposition to defendant because she had a viable claim for excess wage loss benefits. We disagree.

MCL 500.3135(3) provides that:

notwithstanding any other provision of law, tort liability arising from the ownership, maintenance, or use within this state of a motor vehicle with respect to which the security required by section 3101 was in effect is abolished except as to:

(c) Damages for allowable expenses, work loss, and survivor's loss as defined in sections 3107 to 3110 in excess of the daily, monthly, and 3-year limitations contained in those sections. . .

A plaintiff may recover such economic work loss damage even if she does not meet the statutory threshold for serious impairment of body function under MCL 500.3135(1). See, e.g., *Cochran v Myers*, 146 Mich App 729, 731; 381 NW2d 800 (1985). However, the plaintiff must still show that the work loss occurred as a result of injuries sustained in the accident, as "work-loss benefits compensate the injured person for income he would have received *but for* the accident." *Marquis v Hartford Acc & Indem*, 444 Mich 638, 645; 513 NW2d 799 (1994), quoting *MacDonald v State Farm Mutual Ins Co*, 419 Mich 146, 152; 350 NW2d 233 (1984).

While plaintiff claimed to have lost two teeth, she presented no evidence suggesting that the lost teeth led to lost wages. As to her other claimed injuries, as previously indicated, plaintiff

in this matter failed to present evidence that reasonably supported the conclusion that her injuries resulted from the automobile accident. Therefore, the trial court did not err in granting summary disposition in favor of defendant.

Affirmed.

/s/ Richard A. Bandstra
/s/ Pat M. Donofrio
/s/ Deborah A. Servitto